

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 4458-02  
Bill No.: HCS for HJR 56  
Subject: Constitutional Amendments; Children and Minors; Family Law  
Type: Original  
Date: February 6, 2014

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Bill Summary: This proposal proposes a constitutional amendment ensuring that parents have a fundamental right to control and direct the care, education, and upbringing of their minor children.

**FISCAL SUMMARY**

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2015	FY 2016	FY 2017
General Revenue	\$0 or (More than \$7,100,000)	\$0	\$0
<b>Total Estimated Net Effect on General Revenue Fund</b>	<b>\$0 or (More than \$7,100,000)</b>	<b>\$0</b>	<b>\$0</b>

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2015	FY 2016	FY 2017
<b>Total Estimated Net Effect on <u>Other</u> State Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

Numbers within parentheses: ( ) indicate costs or losses.  
This fiscal note contains 8 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2015	FY 2016	FY 2017
<b>Total Estimated Net Effect on <u>All</u> Federal Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2015	FY 2016	FY 2017
<b>Total Estimated Net Effect on FTE</b>	<b>0</b>	<b>0</b>	<b>0</b>

☐ Estimated Total Net Effect on All funds expected to exceed \$100,000 savings or (cost).

☒ Estimated Net Effect on General Revenue Fund expected to exceed \$100,000 (cost).

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2015	FY 2016	FY 2017
<b>Local Government*</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

\* Possible Transfers-in and expenses would net to \$0.

## FISCAL ANALYSIS

### ASSUMPTION

Officials from the **Joint Commission on Administrative Rules** assume the proposal would not fiscally impact their agency.

Officials from the **Office of State Courts Administrator**, the **Department of Elementary and Secondary Education**, the **Department of Mental Health**, and the **Department of Public Safety - Missouri State Highway Patrol** each assume the proposal would not fiscally impact their respective agencies.

Do to time constraints, **Oversight** is referring to agency responses from the previous version of this proposal for the following agencies:

In response to the previous version of this proposal, officials from the **Office of Secretary of State (SOS)** state each year, a number of joint resolutions that would refer to a vote of the people a constitutional amendment and bills that would refer to a vote of the people the statutory issue in the legislation may be considered by the General Assembly.

Unless a special election is called for the purpose, Joint Resolutions proposing a constitutional amendment are submitted to a vote of the people at the next general election. Article XII section 2(b) of the Missouri Constitution authorizes the governor to order a special election for constitutional amendments referred to the people. If a special election is called to submit a Joint Resolution to a vote of the people, section 115.063.2 RSMo requires the state to pay the costs. The cost of the special election has been estimated to be \$7.1 million based on the cost of the 2012 Presidential Preference Primary. This figure was determined through analyzing and totaling expense reports from the 2012 Presidential Preference Primary received from local election authorities.

The Secretary of State's office is required to pay for publishing in local newspapers the full text of each statewide ballot measure as directed by Article XII, Section 2(b) of the Missouri Constitution and Section 116.230-116.290, RSMo. The Secretary of State's office is provided with core funding to handle a certain amount of normal activity resulting from each year's legislative session. Funding for this item is adjusted each year depending upon the election cycle with \$1.3 million historically appropriated in odd numbered fiscal years and \$100,000 appropriated in even numbered fiscal years to meet these requirements. The appropriation has historically been an estimated appropriation because the final cost is dependent upon the number of ballot measures approved by the General Assembly and the initiative petitions certified for the ballot. In FY 2013, at the August and November elections, there were 5 statewide Constitutional Amendments or ballot propositions that cost \$2.17 million to publish (an average of \$434,000

ASSUMPTION (continued)

per issue). Therefore, the Secretary of State's office assumes, for the purposes of this fiscal note, that it should have the full appropriation authority it needs to meet the publishing requirements. However, because these requirements are mandatory, we reserve the right to request funding to meet the cost of our publishing requirements if the Governor and the General Assembly change the amount or eliminate the estimated nature of our appropriation.

**Oversight** has reflected in this fiscal note, the state potentially reimbursing local political subdivisions the cost of having this joint resolution voted on during a special election in fiscal year 2015. This reflects the decision made by the Joint Committee on Legislative Research, that the cost of the elections should be shown in the fiscal note. The next scheduled general election is in November 2014 (FY 2015). It is assumed the subject within this proposal could be on that ballot; however, it could also be on a special election called for by the Governor. Therefore, Oversight will reflect a potential election cost reimbursement to local political subdivisions in FY 2015.

In response to the previous version of this proposal, officials from the **Department of Social Services (DSS) - Division of Legal Services (DLS)** state the proposal is not expected to impact the DLS fiscally, but may otherwise impact the Children's Division. That impact is unknown. The standard of evidence for the Children's Division to substantiate a report of child abuse/neglect is Preponderance of the Evidence (POE). Once a report has been found true by POE, the parents may be asked to engage in services through the Children's Division in order to address issues of abuse/neglect with the intent to provide education and skills training to the parents that may lessen the probability of future referrals and decrease the risk of abuse/neglect. These family centered services cases, while voluntary, are often opened in order to avoid court action. The proposal, as written, allows for investigation but may lead to confusion regarding a request for a parent to participate in services based on a POE finding. Currently, the services are always voluntary but there may be consequences, including juvenile court action, for failure to participate, if such participation is deemed necessary to protect the children. If enacted, advocates for parents may attempt to utilize this section to argue that the standard for placing a name in the central registry needs to be increased from the current preponderance of evidence standard to a clear and convincing standard cited in section 35.4. DLS believes that the last sentence of section 35.5 was included to eliminate that risk. However, it is possible that DLS may see litigation over this issue if the amendment is enacted. This litigation can be expected to have a fiscal impact, but it is not possible to calculate that impact with current information. DLS, therefore, projects an unknown fiscal impact.

**Oversight** assumes the potential for litigation to be speculative and, therefore, assumes the proposal will have no fiscal impact on the DSS-DLS. If a significant fiscal impact were to occur, the DLS could request additional funding through the appropriations process.

ASSUMPTION (continued)

In response to the previous version of this proposal, officials from the **DSS - Children's Division (CD)** state this proposal proposes a constitutional amendment to ensure parents' fundamental rights to control and direct the care, education and rearing of their children.

This proposal will not fiscally impact the CD.

While the intent of this proposal is to provide certainty to parents regarding their fundamental rights to parent their children without governmental interference, section 35.4 provides for those rights to be modified by a court of law when a parent has been found or plead guilty to certain offenses or been found by a court of law by clear and convincing evidence to have committed child abuse, child neglect or medical neglect, or been found responsible for jeopardizing the life, health and safety of a child; or as a result of adoption, paternity, child abandonment, mental incompetency, or marital dissolution proceedings; or when a child has been conceived and born as a result of an act of rape or through the voluntary consent of the parent of a child. In addition, Section 35.5 provides language that would continue to allow peace officers, law enforcement officials, juvenile courts, other courts of law, or state agencies to continue to take the necessary actions to protect the life, health and safety of minor children and to investigate child abuse, child neglect, or medical neglect.

In response to the previous version of this proposal, officials from the **Office of Attorney General** assume any potential costs arising from this proposal can be absorbed with existing resources.

In response to the previous version of this proposal, officials from the **Department of Health and Senior Services**, the **Office of Prosecution Services**, the **City of Columbia**, the **City of Jefferson City**, the **City of Kansas City**, the **City of Springfield**, **St. Louis County**, the **Boone County Sheriff's Department**, the **Columbia Police Department**, the **Francis Howell School District**, **Fulton Public Schools**, and **Parkway School** each assume the proposal would not fiscally impact their respective agencies.

<u>FISCAL IMPACT - State Government</u>	FY 2015 (10 Mo.)	FY 2016	FY 2017
<b>GENERAL REVENUE FUND</b>			
<u>Transfer-Out - SOS</u>			
Reimbursement of local election authority election costs if a special election is called by the Governor	\$0 or (More than \$7,100,000)	\$0	\$0
<b>ESTIMATED NET EFFECT ON THE GENERAL REVENUE FUND</b>	<b><u>\$0 or (More than \$7,100,000)</u></b>	<b><u>\$0</u></b>	<b><u>\$0</u></b>
 <u>FISCAL IMPACT - Local Government</u>	 FY 2015 (10 Mo.)	 FY 2016	 FY 2017
<b>LOCAL ELECTION AUTHORITIES</b>			
<u>Transfer-In - Local Election Authorities</u>			
Reimbursement of election costs by the State for a special election	\$0 or More than \$7,100,000	\$0	\$0
<u>Costs - Local Election Authorities</u>			
Special election	<u>\$0 or (More than \$7,100,000)</u>	<u>\$0</u>	<u>\$0</u>
<b>ESTIMATED NET EFFECT ON LOCAL ELECTION AUTHORITIES</b>	<b><u>\$0</u></b>	<b><u>\$0</u></b>	<b><u>\$0</u></b>

FISCAL IMPACT - Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

## FISCAL DESCRIPTION

Upon voter approval, this proposed constitutional amendment specifies that parents have a fundamental right to exercise exclusive control over the care, custody, and upbringing of their minor children, including all decisions involving the discipline, education, religious instruction, health, medical care, place of habitation, and general well-being of the minor children. Parents have the right to choose to educate their children in public schools, private schools, or in-home education to prepare them for future obligations in life.

The resolution prohibits the state and any of its political subdivisions or any agency, entity, or person acting on behalf of the state or any political subdivision from denying or impairing the fundamental right of parents to direct the upbringing, education, and care of their children. However, the right can be modified by a court when a parent has been found guilty of or pleads guilty to a crime of violence against a child, abuse of a child, kidnapping of a child, abandonment of a child, sexual abuse of a child, sexual conduct or any other sexual offense against a child, criminal nonsupport, or endangering the welfare of a child; when a parent has been found by a court by clear and convincing evidence to have committed child abuse, child neglect or medical neglect; or as a result of adoption, child abandonment, mental incompetency or marital dissolution proceedings, or through the voluntary consent of the parent of a child. These provisions cannot be construed to diminish the authority of law enforcement officers and courts to take necessary actions in emergency situations to protect the life, health, and safety of minor children, the courts to provide for the temporary custody of a child in emergency situations, the juvenile courts to assume jurisdiction over specified minor children; or courts to issue child protection orders for specified children.

These provisions cannot be construed to confer upon a parent the right to compel a minor child to undergo an abortion or to empower a parent to enroll his or her minor child in a public school outside of the area of the child's residence. These provisions cannot be construed to confer upon a parent, of a public school student, the right to dictate to public school administrators the curriculum, program choices, or levels of service provided to the child.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

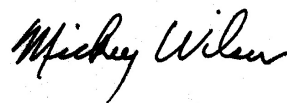
## SOURCES OF INFORMATION

Office of Attorney General  
Office of State Courts Administrator  
Department of Elementary and Secondary Education  
Department of Mental Health

HWC:LR:OD

SOURCES OF INFORMATION (continued)

Department of Health and Senior Services  
Department of Social Services -  
    Children's Division  
    Division of Legal Services  
Department of Public Safety -  
    Missouri State Highway Patrol  
Joint Commission on Administrative Rules  
Office of Prosecution Services  
Office of Secretary of State  
City of Columbia  
City of Jefferson City  
City of Kansas City  
City of Springfield  
St. Louis County  
Boone County Sheriff's Department  
Columbia Police Department  
Francis Howell School District  
Fulton Public Schools  
Parkway School District



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